vThe Hon'ble Sri Justice Nooty Ramamohana Rao

Writ Petition No.17467 of 1997

Dated 19th December 2006

Between:

Mallireddi Lakshmi Permanulu.

.. Petitioner

And

1.Collector, Krishna at Machilipatnam,
and another.

.. Respondents

The Hon'ble Sri Justice Nooty Ramamohana Rao

Writ Petition No.17467 of 1997

Order:

This Writ Petition has been instituted questioning the correctness and validity of the notice issued by the 2nd respondent-Mandal Revenue Officer, Musunuru Mandal, Krishna District under Section 3 of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (for short 'the Act') (Act 9 of 1977) calling upon the writ petitioner to show cause as to why he shall not be summarily evicted from the lands in an extent of Ac.2.71 cents (dry land) situated in Survey Nos.47/4 and 47/5 of Katrenpadu Village of Musunuru Mandal, Krishna

District.

It is not in dispute that the Mandal Revenue Officer, Musunuru Mandal has invoked the powers available to him under of Section 4 of the Act._

The writ petitioner avers that he purchased separately an extent of Ac.0.70 cents and Ac.2.01 cent situated in Survey No.47/4 from one Sri Bethapudi Dharmaiah and
Sri Bethapudi Arjaiah, sons of Nagaiah of Katrenupadu Village.

It is not in dispute that Katrenupadu Village was an estate village and after the advent of the Estates Abolition Act, which came into effect from 07-09-1950, survey and settlement operations were carried out and the lands in question were classified as 'assessed waste dry lands'. Consequently, when the State Government had undertaken the assignment of the assessed waste dry lands in the village, various extents of land have been assigned to the eligible beneficiaries. The lands purchased by the writ petitioner form part of Patta Nos.733 and 734 respectively. It is also not in dispute that these lands have been assigned on payment of market value fixed by the Government *viz*., @ Rs.350/- per acre in case of dry lands and Rs.500/-

per acre in case of wet lands. The said amount was ordered to be paid within 15 instalments together with interest @ 6½ % p.a. However, it is important to notice that clause 1 of the D-Form patta itself contains that the 'lands assigned shall be heritable but not alienable'. A note has also been appended immediately down below that 'this condition will not apply to the cases of assignment made on collection of market value under Para 1(8) of G.O.Ms.No.1142 dated 18th June, 1954.' Thus, it is clear that the condition that the 'lands shall be heritable but not alienable' will not be applicable in cases, where the assignment of land was made on collection of the market value. In the instant case, the lands in question have been assigned in favour of Bethapudi Dharmaiah and Bethapudi Arjaiah on condition that they shall pay the market value on instalment basis.

In these set of circumstances, the learned Counsel for the writ petitioner would urge that the transaction of sale accomplished by the writ petitioner is not attracted by the provisions of Act 9 of 1977, and, therefore, initiation of eviction proceedings in terms of Section 4 read with Rule 3 of the A.P.Assigned Lands (Prohibition of Transfers) Rules (for short 'the Rules') framed under Act 9 of 1977 is without jurisdiction.

Though Act 9 of 1977 has been enacted to prohibit transfer of lands assigned to landless poor persons, but nonetheless, it had specifically confined its sweep and applicability to certain classes of assigned lands. Section 2(1) of the Act defined the expression "assigned land" in the following terms:

> ' "assigned land" means lands assigned by the Government to the landless poor persons under the rules for the time being in force, subject to the condition of non-alienation and includes lands allotted or transferred to landless poor persons under the relevant law for the time being in force relating to land ceilings; and the word "assigned" shall be construed accordingly.'

Thus, the expression 'assigned land' will attract only such classes of assignments where the condition of

non-alienation is the predominant factor. In other words, if the lands are not prohibited from alienation, they do not fall within the sweep of the expression 'assigned land'.

Sub-section (1) of Section 3 of the Act reads as under:

> (1) Where before or after the commencement of this Act any land has been assigned by the Government to a landless poor person for purpose of cultivation or as a house-site then, notwithstanding to the contrary in any other law for the time being in force or in the deed to transfer or other document relating to such

> land, it shall not be transferred and shall be deemed never to have been transferred; and accordingly no right or title in such assigned land shall vest in any person acquiring the land by such transfer.

Thus, it is clear that Section 3(1) of the Act prohibits the transfer of assigned land and as per Section 4 of the Act, action for violation of the provisions of Section 3 of the Act can be initiated. It follows, that transfer of certain classes of assigned lands, where the right of alienation has been conceded in favour of the grantee, are not prohibited by the provisions of the Act itself. It stands to reason that the provisions of Act 9 of 1977 will be attracted only in cases, where the predominant term of the grant is centered around 'non-alienability of the lands', but, wherever alienation of land is allowed or permissible, provisions of the Act do not get attracted. I am, in fact, fortified in my view, by a judgment rendered by a Division Bench of this Court in ***Nimmagadda Rama Devi vs. District Collector, Krishna District & another***[1]***.*** In Para 7 of the said judgment, similar issue has been considered in the following manner:

> "By reading the above provisions, it is apparently clear that the scheme of the Act is to prohibit alienation of assigned lands except those on payment of market value because the whole idea of the Act is to make free gift of the lands to the landless poor persons whereas the lands were originally assigned to the assignees as per G.O.Ms.NO.1142 dated

1.6.1954 on payment of market value under unavoidable circumstances. Further the definition of 'assigned land' makes it clear that lands assigned to the landless poor persons under the rules for the time being in force, subject to the condition of non-alienation and includes lands allotted or transferred to landless poor persons under the relevant law for the time being in force relating to land ceilings, and the word 'assigned' shall be construed accordingly. From the above, it has to be construed that if there is a condition of non-alienation while assigning the lands or the land is assigned under the provisions of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, then only it is deemed as assigned and under Act No.IX of 1977. In the case on hand, here is no condition barring alienation of lands. On the other hand the note appended to Condition No.1 of 'D' form patta specifically says that " this condition will not apply to cases of assignment made on collection of market value under part 1(8) of G.O.Ms.No.1142 of 18-6-1954". By that condition, it is evident that there is no bar for alienation of lands. Therefore, it cannot be said that the lands are assigned lands. When the lands are not assigned lands, the Art No.IX of 1977 has no applicability to the assignments made to the assignees. In RAVURI TULISAMMA V. MANDAL REVENUE OFFICER[2] a learned single Judge of this Court held that cancellation of assignment of land and grant of "D" form patta on receiving consideration, on the ground of alienation, is illegal.'

However, the learned Government Pleader tried to distinguish the application of the above referred principle to the instant case on the ground that the

alienation by the original grantees had taken place during February/March, 1996, and by that time, the grantees have not paid the market value of the land, and in fact, the value of the lands as determined in the grant together with interest was paid through separate challans drawn on 21st August, 1996 and 23rd August, 1996 by the writ petitioner himself but not by the grantees. Therefore, the learned Government Pleader would urge that since the value of the assigned land has been paid nearly six months after the sale transaction or alienation has taken place, the original grantees are liable to be declared to have violated the condition of the grant and therefore, the proposed action for cancellation of the original grant cannot be found fault with.

I am afraid, the contention of the learned Government Pleader does not merit any further consideration for the reason that when the grant was made on 27th October, 1973, no doubt, 15 annual instalments were fixed for payment of the market value of Rs.350/- per acre together with interest @ 6½% p.a. However, for the default or failure to pay up those instalments, the State has not initiated any action to cancel the original grant made in favour of the original grantees *viz*., Sri Bethapudi Dharmayya and Bethapudi

Arjayya. Therefore, it cannot be said that the proposed action to evict the writ petitioner from the lands in question is for the failure on the part of the assignees to pay up the market value together with interest as agreed to by them. At any rate, the total land value together with interest has been paid up in August, 1996 prior to initiation of the impugned action. Therefore, the State cannot entertain a grievance that it had not received the total value of the land together with interest in accordance with the grant, though the said amount has been paid up long subsequent to the grant of instalments in terms of the grant. It is inferable that the original patta was granted in October, 1973 with 15 annual instalments for payment of the market value, which period had expired by October, 1988, and between October, 1988 to August, 1996, the State Government had not initiated any action against the original assignee for recovery of the market value of the land together with interest. Obviously, the State must be conscious that it must adopt a soft policy towards the grantees and it is only anxious to secure the market value as and when it becomes feasible from the original grantee. It is therefore clear that the total land value together with interest having been paid up by August, 1996, the objection raised by the learned Government Pleader that the alienation has taken place prior to

payment of market value and therefore, it is hit by the provisions contained in the Act is without any merit.

Since I have already come to the conclusion that the provisions of the Act do not get attracted in the instant case, the question of deciding as to whether the sale transaction between the writ petitioner and the original grantees is a
bona fide one or not does not call for any decision in this case. The further contention that the land value together with interest has been paid up by the writ petitioner but not by the original allottees also is merit less, inasmuch as, the State is interested in collecting the land value as determined by it and it cannot raise an objection that the original grantee alone has to pay the said money from out of his own earnings. Any payment made on behalf of the original grantee would amount to the actual payment of market value only. After all, the colour of the currency does not change, based upon the individual, who makes the payment, so long as legal tender has been offered as payment. For these reasons, I hold that the impugned notice issued by the Mandal Revenue Officer, Musunoor, proposing to evict the writ petitioner is bad and unsustainable. The alienation made by the original grantees in favour of the writ petitioner having been made more than ten years after the original grant, does not call for any further

action by the State Administration.

For the foregoing reasons, the Writ Petition is allowed and the impugned notice dated 09-07-1997 issued by the

2nd respondent is quashed. No costs.

(Nooty Ramamohana Rao, J)

19th December, 2006
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[1] **1996(2) Law Summary 325**
[2] **1991 (1) An.W.R. 533**